



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 080004

Petitioner, Antonia Rudenstine, applied to the Building Commissioner for permission to convert a portion of the attic into habitable floor space to be combined with the third floor dwelling unit at 3-5 Mulford Street. The application was denied and an appeal was taken to this Board.

On 24 January 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 6 March 2008, at 7:00 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 14 and 21 February 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **ANTONIA RUDENSTINE**
Location of Premises: **3-5 MULFORD ST BRKL**
Date of Hearing: **03/06/2008**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Main Library, 2nd. floor**

A public hearing will be held for a variance and/or special permit from

1. **5.20; Floor Area Ratio, Variance Required.**
2. **5.22.3.c; Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Special Permit Required.**
3. **8.02.2; Alteration or Extension, Special Permit Required**

of the Zoning By-Law to convert a portion of the attic into habitable floor space to be combined as part of the third floor dwelling unit per plans at **3 MULFORD ST BRKL**.

Said Premise located in an **M-1.0** district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board Members Jonathan Book and Mark Allen. The owner was represented by Attorney Ronny M. Sydney, 370 Washington Street, Brookline Village, MA 02443 and her architect, Phillip Kramer, 84 Davis Avenue, Brookline, MA 02445.

Attorney Sydney stated that 3-5 Mulford Street is a 3½-story, three-family structure located to the north of Clark Playground. Constructed in 1901, the building is a triple-decker with a gabled-roof attic. The surrounding neighborhood is comprised of multifamily and single-family dwellings. This is one of seven homes that front on Clark Playground. Mulford and Edwin Streets, both dead-ends, front directly on the park. She said that the area remains one of the few affordable neighborhoods in Brookline due to the density of the homes and the small lots.

Attorney Sydney described the playground as the front yard for the seven homes. She said that the petitioner, Antonia Rudenstine, is proposing convert the fourth-floor attic into habitable floor space, to be combined with and accessed from the third-floor unit. She said that Ms. Rudenstine currently lives on the second floor of the three-condominium structure. She said her client purchased the third floor and attic as a fixer-upper with the intention of moving to the third/attic levels in order to be able to afford to live in Brookline. Ms. Rudenstine intends to sell the second floor unit as the upper floors become available. The converted attic would provide 783.2 square feet of additional floor area, and would include the creation of two bedrooms, one bathroom, a laundry area, a home office and an alcove. The attic would be accessed by a new staircase, which would be created by removing an existing bedroom on the third floor. The applicant is also proposing to install a series of skylights on the roof to provide sunlight. Attorney Sydney stated that other than the skylights, there will be no external evidence of the increased living area. She stated that due to confusion over exactly what constituted habitable space, they initially applied for relief under Section 5.22.3.c assuming they could finish up to 350 sf of additional floor space with a Special Permit. Upon analysis of the plan, it was determined that the habitable floor area was in excess of 350 sf; therefore they are seeking a variance under Section 5.20 as provided-for in the denial letter.

Attorney Sydney presented a petition to the Board supporting Ms. Rudenstine's project signed by all the abutters in owner-occupied units. Jaideep Baphna who resides at 3 Mulford Street, below Ms. Rudensitne, stated that he hoped the Board would approve the petition as Ms. Rudenstine and her family are good neighbors and are almost extended family. No one spoke in opposition to the project.

Adam Serafin, planner, provided the zoning analysis for the Board.

	Allowed		Existing	Proposed	Relief
	By Right	By Special Permit			
F.A.R	1.0 (100%)	1.50 (150%)	1.31 (131%)	1.44 (144%)	S. P./Variance*
Floor Area (s.f.)	2,794	4,191	3,665	4,015	-

*Under Section 5.22.3.c, the Board of Appeals may allow by special permit a floor area increase of less than 350 square feet, up to 150% of the permitted gross floor area. Although the architect submitted a certified letter with the FAR increase shown as 349 s.f., the Planning Department believes that the zoning and building code requirements for habitable floor area were not interpreted correctly and that the proposal is for approximately 500 s.f.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or enlarge a pre-existing non-conforming structure.

Mr. Serafin stated that the Planning Board is supportive this proposal to convert the attic at 3-5 Mulford Street into habitable space to allow additional living space for the applicant. The conversion of the attic will not alter the exterior of the structure, other than to add skylights, and therefore will not have a detrimental impact on abutters or the surrounding neighborhood. The Planning Board also has no objection to the applicant converting additional space in the attic to habitable space, which the applicant is now considering, since she will need a variance for either option. Mr. Serafin said that, if the Board of Appeals finds that the statutory requirements for a variance are met, the Planning Board recommends approval of the proposal and the submitted plans, as long as there are no exterior changes other than skylights, titled "Rudenstine Residence" prepared by Frank P. Janusz Architecture, and last dated 02/15/08, and the site plan prepared by Dennis O'Brien P.L.S., and last dated 10/17/07, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit floor plans to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision:
1) final floor plans stamped and signed by a registered architect, 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair then called upon Walter White, Acting Building Commissioner to deliver the Building Department comments. Mr. White reviewed the confusing issue regarding the interface of the Building and Zoning codes with respect to what counts as habitable space. Mr. White said that the Building Department had no objection to either the relief requested or to the conditions recommended by the Planning Board.

The Chair asked Attorney Sydney if she had any closing remarks. Attorney Sydney said that the petitioner meets the requirements for a variance due to the unique shape of the lot. She said that since the lot does not have a front yard other than Clark Playground, and since it does not have a side yard, while not unique to the immediate neighborhood it is certainly unique to the zoning district. She said that financially her client would not be able to remain in Brookline with her family should the requested relief be denied. Lastly, Attorney Sydney stated that there would be no substantial detriment to the public good since no visible change, other than skylights, would be visible from the street and the project does not nullify or in any way derogate from the intent or purpose of the bylaw.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that is desirable to grant a Special Permit to enlarge a pre-existing, non-conforming structure under Section 8.02.2 of the Zoning Bylaw and made the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Regarding the requested variance needed as to floor area ratio, Section 5.20, the Board finds that due to the unusual shape of the lot, literal compliance with the requirements of the by-law is not possible. The subject lot has no front or side yard and while not unique to the immediate neighborhood, it is unique to the zoning district in general. As a result of the lot conditions, failure to grant the requested variance would cause substantial hardship to the property owner by preventing the owner from fully utilizing the property. Granting the requested variance will allow the petitioner to finish-off the attic and utilize space that will not be visible from the street. The Board found that owing to circumstances relating to the shape of the subject land but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the by-law would involve substantial hardship financial or otherwise to the petitioner, and that desirable relief might be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the by-law.

Therefore, the board voted unanimously to grant all the requested relief with the following conditions:

- 1. Prior to issuance of a building permit, the applicant shall submit floor plans to the Assistant Director for Regulatory Planning for review and approval.**

2. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) final floor plans stamped and signed by a registered architect, 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

08 MAR 20 PM 2:54

Unanimous Decision of
the Board of Appeals



Enid Starr

Filing Date: March 20, 2008

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals